ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 95-22
Market Entry and Regulation of	)	RM-8355
Foreign-affiliated Entities	)	RM-8392

COMMENTS

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SUMMARY

MCI supports the Commission's effort in this proceeding to develop a regulatory framework for encouraging foreign governments to open their markets to U.S. carriers and to promote competition in the provision of global telecommunications services. As the Commission properly recognizes, the global marketplace is demanding uniform, "seamless" telecommunications services transparent to geographic boundaries, and sophisticated customers commonly prefer "one-stop shopping" as the preferred means of linking their locations with functionally the same services. Foreign carriers have a decisive competitive advantage in meeting that customer requirement when they enjoy unrestricted entry into the U.S. market, while their home markets are closed to competition by U.S. carriers.

The Commission's proposal to use an "effective market access" test in the context of the Section 214 certification process should contribute substantially to eliminating the disadvantage that U.S. carriers face. Requiring foreign carriers seeking to enter the U.S. market and provide international facilities-based services to demonstrate that U.S. carriers have effective market access to their primary markets should provide a strong impetus to pry open foreign markets. However, MCI recommends that the Commission refine its proposal in certain respects in order to realize the goal of this proceeding.

Rather than allowing the foreign carrier to assert that its primary markets will be opened to competition "in the near

future," as the Commission suggests, it would be preferable if the Commission established a specific timetable for that action -- e.g., 18 months. The Commission should apply the effective market access test whenever a foreign carrier proposes to acquire more than a 10 percent ownership interest in a U.S. carrier. In the event two or more foreign carriers propose to invest in a U.S. carrier, the Commission should apply the effective market access test to each foreign carrier that seeks to acquire at least a 5 percent interest in the U.S. carrier, if the foreign carriers' collective interests would exceed 10 percent.

The Commission does not intend to apply its effective market access test to foreign carriers that enter into co-marketing arrangements with U.S. carriers when those arrangements are both in theory and practice "non-exclusive" -- i.e., when they do not afford U.S. carriers the exclusive right to provide basic services. Nonetheless, the Commission is considering imposing reporting requirements concerning those arrangements. Co-marketing arrangements, particularly involving alliances between dominant foreign carriers and a dominant U.S. carrier -- such as AT&T's WorldPartners -- must be closely supervised by the Commission to ensure that they are not used as vehicles for discriminating against nonallied U.S. carriers. The Commission recently imposed reporting requirements on MCI regarding its relationship with British Telecommunications plc because of public interest concerns and such generic concerns warrant the Commission imposing essentially the same requirements with

respect to all co-marketing arrangements between U.S. and foreign carriers.

MCI also supports the Commission's use of the effective market access test as a device for encouraging foreign administrations to open their markets in making public interest determinations under Section 310(b)(4) of the Act where the foreign ownership in a U.S. licensee would exceed the 25 percent statutory benchmark. In this context, the Commission should apply the effective market access test with regard to any foreign entity that proposes to acquire at least a 5 percent interest in a U.S. carrier.

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COMMENTS

MCI Telecommunications Corporation (MCI) hereby files these comments in response to the Commission's Notice of Proposed Rulemaking (NPRM), FCC 95-53, released February 17, 1995, in the above-captioned proceeding. The Commission proposes modifying the public interest standard under Section 214 of the Communications Act governing applications of foreign carriers to enter the U.S. market by providing international facilities-based services. The Commission would require a demonstration that "effective market access is, or soon will be, available to U.S. carriers seeking to provide basic, international telecommunications facilities-based services in the primary markets served by the carrier desiring entry." Id. at ¶ 2. The Commission is also considering employing the "effective market access" standard in making public interest findings under Section 310(b)(4) of the Act, where the proposed foreign ownership interest in a licensee would exceed the 25 percent statutory benchmark. Id. at ¶ 4.

MCI agrees that "many important foreign communications services and facilities markets or market segments remain closed

to U.S. competition, even while entities from those markets have entered or seek to enter similar U.S. markets." Id. at ¶ 22. MCI has consistently supported the Commission's efforts to persuade foreign countries to open their markets to U.S. carriers, and it endorses the thrust of the policies the Commission is proposing in this proceeding.[1]

I. INTRODUCTION

The Commission properly recognizes that "[t]he focus of telecommunications service providers has become increasingly global over the last several years, reflecting the increasingly global nature of the economy." NPRM at ¶ 20. Multinational corporations, which are principally headquartered in the U.S., increasingly are demanding uniform, "seamless" telecommunications services transparent to geographic or national boundaries. These sophisticated customers need the ability to link all of their locations with functionally the same telecommunications services

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1. The Commission issued its NPRM largely in response to a Petition for Rulemaking filed on September 22, 1993 by American Telephone and Telegraph Co. (AT&T), RM-8355. MCI opposed the specific proposals contained in AT&T's petition, but "agree[d] that the Commission should review its international telecommunications policies with the aim of fostering the participation of U.S. carriers in foreign markets." MCI Comments, dated November 1, 1993, at 3. As MCI observed, any comprehensive review of Commission policies should include, at a minimum, the changing nature of customer demand for international telecommunications services; the importance of U.S. carriers associating with foreign carriers through a variety of relationships in order to satisfy that demand; whether the regulatory policies governing AT&T should be strengthened in order to facilitate the efforts of competitors to penetrate foreign markets; and the Commission's experience in persuading foreign carriers to reduce accounting rates. Id. at 4.

and they commonly prefer "one-stop shopping" as an efficient and economical way of satisfying that requirement. In addition, Americans travelling internationally, or with friends and family abroad, have a similar interest in efficient and economical international telecommunications services. Id.

To meet these customer needs, U.S. and foreign telecommunications service providers have entered into a variety of alliances, including equity relationships, technological joint ventures, co-marketing arrangements and other relationships. The Commission's NPRM proposes market opening measures only with respect to one type of relationship -- equity investments by foreign carriers in U.S. international facilities-based carriers. In the Commission's view, when the primary market of the foreign carrier is closed to competition by U.S. carriers, this type of arrangement presents the greatest anticompetitive threat to U.S. interests.

The Commission has three basic goals in this proceeding: (1) promoting effective competition in the global market for communications services; (2) preventing anticompetitive conduct in the provision of international services or facilities; and (3) encouraging foreign governments to open their communications markets. Id. at ¶ 26.

Promoting effective competition in the global market is the Commission's primary goal because it will lead to lower rates and more innovative and diverse services for U.S. consumers. Id. at ¶ 27. Realizing that goal requires preventing foreign carriers

from engaging in anticompetitive conduct as a result of enjoying unrestricted entry into the U.S. market while their home markets are closed to competition by U.S. carriers. Foreign carriers would have a decisive competitive advantage in offering ubiquitous U.S. services, one-stop shopping, lower rates and the faster provisioning of services, if U.S. carriers cannot compete in the foreign carriers' home markets. Id. at ¶¶ 28-29.

The Commission identifies two conditions that must be met to prevent a foreign carrier from exploiting its market power to the detriment of U.S. carriers. First, all U.S. carriers must have access to facilities at both ends of the international link. Second, there must be "effective competitive safeguards (including interconnection rules) enforced by an appropriate regulatory authority at both ends." Id. at ¶ 30. To achieve these conditions and thereby persuade foreign governments to open their markets to competition by U.S. carriers, the Commission proposes to employ an "effective market access" standard in reviewing foreign carrier facilities-based entry proposals under Section 214 and Section 310(b)(4) of the Act.

II. THE SECTION 214 STANDARD THAT SHOULD GOVERN THE ENTRY BY FOREIGN CARRIERS

A. International Facilities-Based Entry

At the outset, the Commission inquires whether it has authority under Section 214 of the Act to employ its proposed effective market access standard. Id. at ¶ 38. The Commission

clearly has broad authority to consider numerous factors, including competitive implications, in reviewing Section 214 applications,[2] and it has exercised that authority in the past in considering foreign carrier proposals to enter the U.S. market.[3] The effective market access standard is merely an elaboration of some of the public interest factors the Commission has traditionally considered in applying Section 214 of the Act.

The Commission defines "effective market access" as the ability of U.S. carriers -- currently or "in the near future" -- to provide "basic, international telecommunications facilities-based services in the primary markets served by the foreign carrier seeking entry." NPRM at ¶ 40. A "primary market" is one "where a carrier has a significant facilities-based presence." Id. (footnote omitted).[4]

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2. See, e.g., General Telephone and Elec. Corp. (GTE-Telenet Merger), 70 F.C.C. 2d 2249, recon. denied, 72 F.C.C. 2d 91 (1979); Applications of Telephone Companies for Section 214 Certificates for Channel Facilities, 21 F.C.C. 2d 307 (1970), aff'd sub nom. General Tel. Co. of Southwest v. U.S., 449 F.2d 846 (5th Cir. 1971).

3. See, e.g., AmericaTel Corp., 9 FCC Rcd 3993 (1994); Telefonica Larga Distancia de Puerto Rico and LD Acquisition Corp., 8 FCC Rcd 106 (1992); fonorola Corporation, 7 FCC Rcd 7312 (1992), recon., 9 FCC Rcd 4066 (1994); FTC Communications, Inc., 2 FCC Rcd 6114 (1987).

4. The Commission has identified the following factors -- none of which are dispositive -- as defining "effective market access": "(1) whether U.S. carriers can offer in the foreign country international facilities-based services substantially similar to those the foreign carrier seeks to offer in the United States; (2) whether competitive safeguards exist in the foreign country to protect against anticompetitive and discriminatory practices, including cost allocation rules to prevent cross-subsidization; (3) the availability of published,

(continued...)

Not every component of the effective market standard must be met to warrant a favorable Commission finding, "if there is evidence that the [foreign] market is fully competitive", and the Commission will decide on a case-by-case basis how much weight to assign each component. Id. Once the Commission conducts its effective market access analysis, it will consider other public interest factors in reviewing foreign carrier entry proposals. Id. at ¶ 45.[5] The Commission may allow a foreign carrier to enter the U.S. market even if it cannot demonstrate that effective market access exists, provided other factors warrant its entry. Id. at ¶ 49. Thus, the Commission intends to "maintain flexibility under this approach to look at all of the public interest factors surrounding entry, and balance the market conditions of the primary markets" of foreign carriers. Id.

Although the Commission clearly has authority under Section 214 to employ the effective market access standard and to balance

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4.(...continued)
nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carriers' facilities for termination and origination of international services; (4) timely and nondiscriminatory disclosure of technical information needed to use or interconnect with carriers' facilities; (5) the protection of carrier and customer proprietary information; and (6) whether an independent regulatory body with fair and transparent procedures is established to enforce competitive safeguards." Id. at ¶ 40.

5. Those additional factors could include "the state of liberalization in the foreign carrier's domestic market and the availability of other market access opportunities to U.S. carriers; the status of the foreign carrier as a government or non-government entity; the general significance of the proposed entry to promotion of competition in global markets; the presence of cost-based accounting rates; and any national security implications." Id.

other public interest concerns in reaching an entry decision, it is crucial that the Commission apply these various criteria consistently. Both foreign carriers contemplating entering the U.S. market and U.S. carriers considering relationships with foreign carriers must have a reasonably precise understanding of the specific actions that foreign administrations must take to satisfy the Commission's standard.

In any event, MCI strongly supports the Commission's proposal. As a major international carrier, MCI fully appreciates the value of opening foreign markets to competition to U.S. carriers and understands the handicaps U.S. carriers face in competing with foreign carriers whose markets are closed. Application of the effective market access standard could materially help level the global telecommunications playing field in which U.S. and foreign carriers compete.

However, MCI recommends that the Commission refine its proposal that the effective market access standard can be satisfied if foreign markets are opened to competition "in the near future."[6] That phrase is too imprecise to provide guidance to foreign carriers or allow U.S. carriers to engage in proper

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6. The actions in progress in the United Kingdom that persuaded the Commission that the U.K. market was sufficiently open to warrant approving the proposed acquisition by BT of an ownership interest in MCI is a useful standard of reference for what constitutes an open market now or "in the near future". The U.K. government actions included a proposed three-stage program on interconnection and an accounting separation regime for BT; and incorporating broad nondiscriminatory obligations in BT's license. See MCI Communications Corporation/British Telecommunications plc, 9 FCC Rcd 3960, 3969-70 (1994) (MCI/BT Order).

planning and could be susceptible to disputes and inconsistent enforcement by the Commission. It would be preferable if the Commission instead established a timetable for meeting its standard. Accordingly, MCI recommends that the Commission prescribe a maximum period of time -- e.g., 18 months -- within which a foreign market must be opened as a condition to allowing a foreign carrier to enter the U.S. market.[7]

MCI supports the Commission's decision to reject AT&T's proposed "comparable market access" standard as "impossible to meet" and unrealistically requiring that foreign regulatory schemes "mimic" the U.S. scheme. AT&T's standard is so highly protectionist that it could never be met, would preclude any foreign participation in the U.S. market, which would not be salutary, and would delay the entry of U.S. carriers overseas. NPRM at ¶ 41. MCI also agrees with the Commission's rejection of AT&T's proposal that foreign carriers implement cost-based accounting rates as a precondition to entering the U.S. market. As the Commission observes, accounting rates should decline in any event as a consequence of opening foreign markets to competition. Id.

MCI supports the Commission's intention to apply the effective market access standard only with respect to a foreign

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7. Under MCI's proposal, the Commission would issue a license to a foreign carrier or its U.S. affiliate conditioned on the subject foreign market becoming open in 18 months. The foreign carrier should be required to demonstrate by the 18 month deadline that its market is open. If the foreign carrier fails to make a satisfactory showing, its Section 214 certificate would be revoked.

carrier's "primary markets." Id. at ¶ 43.[8] Only in "primary markets" are traffic flows so substantial and the market power of the foreign carrier such that it could engage in anticompetitive conduct materially detrimental to U.S. carrier competitors and their customers.

The Commission also tentatively concludes that the effective market access test should not be applied when a U.S. carrier seeks to acquire an ownership interest in a foreign carrier. If that foreign carrier would qualify for dominant carrier treatment under Section 63.10 of the Commission's Rules, the Commission would regulate the U.S. carrier as if the foreign carrier had entered the U.S. market. Id. at ¶ 50. This proposal is reasonable.

The risk of a foreign carrier leveraging its market power to the detriment of U.S. carriers is not present to the same extent as when the foreign carrier does not seek to enter the U.S. market. However, regulating a U.S. carrier as dominant if the foreign carrier would be so regulated had it entered the U.S. market appears to be sensible. Dominant international carrier regulation is necessary when a carrier has sufficient market

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8. The Commission defines "primary markets" as those "key markets where the carrier has a significant ownership interest in a facilities-based telecommunications entity that has a substantial or dominant market share of either the international or local termination telecommunications market of the country, and traffic flows between the United States and that country are significant." It defines a "secondary market" as a "market in which [a carrier] has an ownership interest in a facilities-based carrier, but is not a substantial or dominant carrier, or where insignificant traffic flows exist between the United States and that country." Id.

power, such that it cannot be constrained by normal market forces. Imputing the foreign carrier's market power to the acquiring U.S. carrier would be reasonable and, therefore, it is reasonable to apply the regulatory regime that would govern that foreign carrier.

The Commission further proposes to amend Section 63.11 of its Rules to require notification within 30 days rather than 90 days of an "affiliation" between U.S. and foreign carriers. The Commission intends to use such notification as a vehicle for determining whether to hold a hearing under Section 214 of the Act on the foreign carrier's intended affiliation. Id. at ¶ 51. This proposal is entirely reasonable. Section 63.11 of the Rules is a suitable procedural vehicle for triggering the necessary Commission review.

B. The Commission's Definition Of Affiliation Should Be Revised

1. Affiliation for Entry Authorization Purposes

For purposes of applying its proposed market entry standard, the Commission is considering revising the "control" test it has traditionally used in determining whether U.S. and foreign carriers are affiliated. The Commission tentatively concludes that a new affiliation standard is required to address the various ways in which foreign carriers could participate in the U.S. international telecommunications market. Those forms of participation could include direct acquisitions, joint ventures

involving less than controlling interests, and co-marketing arrangements such as AT&T's WorldPartners Co. Id. at ¶ 53.

The Commission "propose[s] to adopt a definition of affiliation that includes cases where a foreign carrier acquires a direct or indirect ownership interest of a certain minimum percentage level, or a controlling interest at any level,[9] in a U.S. carrier." Id. at ¶ 57. The Commission "will look at what level of ownership may give the foreign carrier the incentive to discriminate in favor of the U.S. carrier or to engage in other strategic conduct that might have anticompetitive effects." Id. The Commission seeks comment on what that ownership level should be and suggests that an ownership interest of "greater than 10 percent" or "greater than 25 percent" may be appropriate. Id. at ¶¶ 57-60.

MCI recommends that the Commission adopt the proposed "greater than 10 percent" ownership interest as the affiliation standard. An ownership interest of that level would be sufficient to give a foreign carrier the incentive to discriminate and otherwise engage in anticompetitive conduct favoring its affiliated U.S. carrier. A foreign carrier's investment interest does not have to exceed 25 percent to precipitate the risk of such conduct. A foreign carrier could be induced to engage in anticompetitive conduct when its investment

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9. The Commission intends to continue to employ established precedent in resolving control issues. Id. at n.46. See International Services, 7 FCC Rcd at 7333.

in a U.S. carrier is substantially lower than 25 percent because the rewards flowing from such conduct could still be substantial even at that reduced level.

The Commission also inquires whether the effective market access standard should be applied "in situations where more than one foreign carrier or a foreign carrier consortium has ownership interests in a U.S. carrier." Id. at ¶ 61. The answer is clearly yes. The risk of anticompetitive harm to U.S. carriers is no less great when foreign carriers, acting together, acquire a combined ownership interest in a U.S. carrier in excess of 10 percent, where their markets are closed to competition.[10] Given that risk, MCI recommends that the Commission aggregate the interests of foreign carriers and apply the effective market access standard to each foreign carrier that acquires an interest of at least 5 percent in a U.S. carrier, if the foreign carriers' collective interests exceed 10 percent.

The Commission proposes to exclude from its definition of "affiliation" co-marketing arrangements between U.S. and foreign carriers, such as AT&T's WorldPartners, provided they are "both

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10. An example of the threat posed by precisely this risk when more than one foreign carrier proposes to acquire more than a 10 percent interest in a U.S. carrier but where each foreign carrier individually would own less than ten percent is presented by the pending proposals of France Telecom and Deutsche Telekom to acquire a 20 percent interest in Sprint. See In the Matter of Sprint Corporation, Petition for Declaratory Ruling, File No. ISP-95-002, Comments of MCI, AT&T, BT North America.

in theory and practice" nonexclusive[11] by not affording U.S. carriers the exclusive right to provide basic services with foreign carriers.[12] Nonetheless, the Commission is sufficiently concerned about the potential anticompetitive ramifications of such arrangements that it has decided to review "whether [its] public interest goals would be served by imposing reporting requirements on U.S. carriers that participate in co-marketing arrangements for the provision of basic global network services." Id. at ¶ 63. At a minimum, the Commission proposes to require the filing of those arrangements pursuant to Section 43.51 of the Commission's Rules. Id.

MCI submits that the Commission should closely supervise co-marketing arrangements, particularly when they involve alliances such as AT&T's WorldPartners between the dominant U.S. carrier and dominant foreign carriers, irrespective of whether those arrangements are nominally non-exclusive. In such circumstances, each carrier has sufficient market power to engage in anticompetitive conduct and, by combining their power, these carriers have a substantial ability to thwart any competition. The foreign carrier partners of the U.S. carrier could engage in discriminatory conduct against unallied U.S. international

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11. The Commission has not provided a basis, based on a public record, for its conclusion that WorldPartners is a non-exclusive arrangement.

12. The Commission indicates that the nonexclusivity requirement would remain in effect until it is "assured of effective facilities-based competition on the foreign end." Id. at n.48.

carriers in a variety of ways, including with regard to proportionate return, accounting rates, and the introduction of new services. If the Commission wishes to make serious progress in affording U.S. carriers greater access to foreign markets, it must address this issue.

The mere filing of the terms of co-marketing arrangements with the Commission is not an effective deterrent to anticompetitive conduct. Greater disclosure of the operations of those arrangements and closer Commission scrutiny of them is necessary. A specific set of reporting requirements would provide the Commission useful information about whether those co-marketing arrangements are truly non-exclusive and would give the Commission a basis for intervening at an early juncture to address any anticompetitive concerns.

Accordingly, MCI recommends that the Commission impose, at a minimum, the following reporting requirements concerning co-marketing arrangements: (1) the filing of a semi-annual circuit status report by the U.S. carrier partner; (2) a written commitment from each foreign co-marketing partner not to offer or provide any special concessions to the U.S. carrier partner relating to the provision of basic services; (3) the U.S. partner must maintain complete records on the provisioning and maintenance of network facilities and services it procures from the foreign co-marketing partner, including those which it procures on behalf of customers of the co-marketing partner, and must make those records available to the Commission upon request;

(4) the U.S. partner must file with the Commission quarterly reports of revenue, number of messages and number of minutes of both originating and terminating traffic generated by the co-marketing arrangement within 90 days from the end of each calendar quarter; and (5) the U.S. partner must file with the Commission copies of all contracts, arrangements and arrangements with the co-marketing partnership that relate to the routing of traffic and settlement of accounts on routes that are covered by the co-marketing arrangement.

The foregoing reporting requirements are analogous to the requirements the Commission adopted in approving the acquisition by BT of an ownership interest in MCI.[13] Co-marketing arrangements such as AT&T's WorldPartners directly compete with alliances between foreign and U.S. facilities-based carriers involving equity investments and present similar public interest concerns. Consequently, it is appropriate that the Commission impose the same reporting requirements on co-marketing arrangements as it has imposed on MCI.

2. Affiliation for Post-Entry Regulation Purposes

Once the Commission permits a foreign carrier to enter the U.S. market, it must decide whether the U.S. carrier affiliate should be regulated as dominant or nondominant. In International Services, the Commission defined a U.S. carrier as an affiliate of a foreign carrier -- and therefore regulated as dominant -- when the U.S. carrier controls, is controlled by, or is under

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13. MCI/BT Order, 9 FCC Rcd at 3973.

common control with the foreign carrier.[14] For purposes of post-entry regulation, the Commission inquires whether it should conform this definition of "affiliation" to the definition used in applying the effective market access standard -- e.g., investment interest in excess of 10 percent in a U.S. carrier. NPRM at ¶¶ 65-66.

There is no rational basis for applying identical definitions of affiliation in both the entry and post-entry contexts. Consistency merely for the sake of symmetry does not justify such mirroring. The question is what goal does the Commission seek to achieve in each context. In the entry context, the Commission's goal is to encourage foreign administrations to open hitherto closed markets to competition by U.S. carriers. To gain the requisite leverage, the Commission proposes a lower-than-control threshold level of investment in a U.S. carrier in triggering the application of the effective market access standard.

However, once the Commission decides to permit a foreign carrier to enter the U.S. market, an entirely different set of concerns comes into play with regard to regulating the subject U.S. carrier as dominant on the route involving the primary markets of the foreign carrier. To date, the Commission has decided not to regulate the U.S. carrier as dominant unless it is controlled by the foreign carrier. Where the proposed ownership interest has not reached the control level, the Commission

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14. International Services, 7 FCC Rcd at 7333.

instead has imposed conditions on the proposed relationship between the U.S. and foreign carriers to minimize any possibility of discriminatory or other anticompetitive conduct.

The Commission has been satisfied that in these less-than-control cases, dominant carrier regulation is unnecessary and that other measures can ameliorate any public interest concerns. There is no rational basis for the Commission to change course and adopt a different policy merely for the sake of conforming its definitions of affiliation in the entry and post-entry contexts. Therefore, the Commission should not change its post-entry policy concerning the classification of a U.S. international carrier as dominant or nondominant.

C. Facilities-Based Carrier Definition

The Commission is considering IDB Communications Group's (IDB) proposal to regulate a carrier as facilities-based only when it acquires the maximum interest in the underlying cable or satellite facility permitted by law. AT&T has argued that IDB's proposal is an effort to evade the Commission's International Resale Policy and would legitimize one-way resale, which the Commission has concluded is contrary to the public interest. NPRM at ¶¶ 67-69.

The Commission proposes to retain its definition of facilities-based carrier. However, as the Commission notes, IDB's proposal would allow carriers to interconnect foreign-leased circuits with the U.S. public switched network without demonstrating that the foreign country provides equivalent resale

opportunities to U.S. carriers. Thus, IDB's proposal would aggravate current settlement deficits and hamper efforts to encourage foreign administrations to open their markets to facilities-based competition. Id. at ¶ 71.

The Commission's criticisms of IDB's proposal are well-founded. The fundamental goal in this proceeding -- opening foreign markets to competition by U.S. carriers -- would be undermined by revising the definition of facilities-based carrier, as IDB proposes. Accordingly, MCI supports the Commission's proposal to codify its current definition of facilities-based carrier. Id.

D. Resale Entry By Foreign Carriers

The Commission tentatively concludes that foreign carrier entry into the U.S. market on a resale basis should not be subjected to the stringent standard governing their entry on a facilities basis because "[t]here is not as substantial a risk of anticompetitive harm to the global market." Id. at ¶ 72. The Commission believes that applying the effective market access standard to resellers would not be as effective in opening foreign markets as it is in the case of foreign carriers' facilities-based entry. Id. at ¶ 73. The Commission's conclusions are reasonable, but its policy proposals should be modified in certain respects.

1. Switched Services Resale

The Commission proposes employing a rebuttable presumption that no competitive harm would result from permitting unlimited

foreign carrier entry for switched resale, even to affiliated countries. Id. at ¶ 74. MCI believes that no such presumption is justified. Foreign carriers operating from closed markets have a substantial capacity to engage in anticompetitive conduct in conjunction with their U.S. affiliates even if their entry into the U.S. market is only on a resale basis. Foreign carriers could offer ubiquitous services at lower prices than their U.S. competitors which are denied entry into the foreign carriers' home markets and must continue to pay accounting rates. Given these anticompetitive risks, foreign carriers should have the conventional burden of demonstrating under Section 214 that their entry into the U.S. market is in the public interest, without the benefit of any presumption of lawfulness. The Commission could then conduct a balanced appraisal of the competitive implications of the foreign carrier's proposal.

2. Private Line Resale

The Commission similarly proposes to adopt a rebuttable presumption that no competitive harm would result from permitting unlimited foreign carrier entry for non-interconnected private line resale. In the Commission's view, given the competitive benefits of such entry, the absence of any negative impact on U.S. net settlements, and the availability of safeguards to protect against discrimination, entry restrictions are unnecessary. Id. at ¶ 76. The Commission's reasoning is sound and MCI agrees with its proposal.

The Commission also inquires whether its current standard -- i.e., an equivalency showing -- governing foreign carrier entry through the resale of private lines interconnected to the public switched network should be modified to conform to the effective market access standard. Id. at ¶ 77. Since the goals of both standards are the same, it would be rational to use the effective market access test in this context as well.

The Commission further invites comments on AT&T's proposal that it require cost-based accounting rates as a condition to authorizing affiliates of foreign carriers to resell interconnected private lines to affiliated countries in order to encourage foreign carriers to reduce accounting rates. Id. at ¶ 78. In authorizing BT North America (BTNA) to provide international simple resale (ISR) service, the Commission required, as a condition of its authorization, that BTNA file a plan setting forth significant reductions by BT in accounting rates with U.S. carriers over the next two year.[15] To be consistent and fair, the Commission should apply the same requirement universally to all foreign carriers proposing to enter the U.S. market on an ISR basis.

Finally, the Commission proposes to codify its International Resale Policy, which provides that a carrier must obtain a Section 214 certificate if it proposes to provide a basic switched service by means of connecting a private line circuit to the public switched network in the U.S. or in the foreign

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15. BT North America, Inc., DA 95-120, rel. Jan. 30, 1995.